

Claims 2-16 remain pending in the application. Claims 2-7 and 9-16 are allowed. Claim 8 remains rejected under 35 U.S.C. Section 102 as being anticipated by Hirata. Applicant submits the following comments in traversal of the prior art rejection.

Claim 8 specifically describes a laser device oscillating in a fundamental transverse mode. This point has been made of record in the Amendment of September 3, 2003. It has also been previously submitted that Hirata operates in a multiple longitudinal mode. Col. 1, lines 53-58, and col. 3, lines 7-11. The Examiner has yet to rebut the fact that Hirata describes an oscillating mode other than that described by claim 8.

Applicant would further rebut the Examiner's position that the arguments of record read features of the specification into the claims. The express arguments relate to the fundamental transverse mode, which is language that appears in the claim and cannot be ignored by the Examiner. It was never submitted that the specific structure of pages 5-6 were being used as a basis for distinction.

The Examiner further contends that the structural similarity between Hirata and the embodiments of the invention support the rejection. However, even a cursory review of any Figure in Hirata would indicate that the Examiner's assessment is incorrect. The Examiner has not explained how the fundamental transverse mode operates in Hirata in view of contradictory discussion in the text of Hirata on the orientation of refractive indices in a direction to propagate a longitudinal, rather than a transverse mode.

The Examiner also appears to be improperly ignoring the recitation regarding the transverse mode due to its presence in the preamble. However, Applicant would submit that this

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is one of those instances where the claim preamble includes structural features of the invention. For instance, the index guided structure of the preamble also appears in the body, thereby breathing life and meaning into the claim recitations of the preamble as a whole. Under such circumstances, the preamble should be deemed to breathe life and meaning to the claim, such that their recitations cannot be ignored for purposes of patentability. MPEP 2111.02.

As a related matter, in the prosecution of this case, the Examiner clearly did consider the recitations on the oscillating mode on the merits, regardless of its presence in the preamble. For example, in the Office Action of June 4, 2003 at page 3 (rejection over Fukunaga), the Examiner acknowledged the oscillating feature despite its presence in the preamble. It would be arbitrary for the Examiner to consider the recitation of the oscillating mode in that situation and not in the present one when the recitations regarding the oscillating mode are analogous to each other in terms of its appearance in the preamble.

Because the Examiner has yet to show where the claimed oscillating feature is shown by the Hirata reference, Applicant would respond to the Office Action accordingly.

As a final matter, Applicant would correct the Examiner's statement of Reasons for Allowance with reference to claim 2. Claim 2 does not recite an upper cladding layer.

In view of the above, Applicant submits that claims 2-16 are in condition for allowance. Therefore it is respectfully requested that the subject application be passed to issue at the earliest possible time. The Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary.

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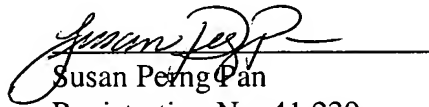
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